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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

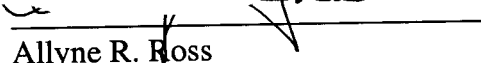
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DEBRA ARMSTRONG,	:	99 CV 6032 (ARR)
	:	
Petitioner,	:	<u>NOT FOR ELECTRONIC</u>
	:	<u>OR PRINT</u>
-against-	:	<u>PUBLICATION</u>
	:	
ELAINE LORD, Superintendent,	:	<u>OPINION AND ORDER</u>
	:	
Respondent.	:	
	X	

ROSS, United States District Judge:

Armstrong's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was denied by the court by order dated January 9, 2004. The court did not issue a certificate of appealability. Petitioner thereafter filed a notice of appeal. By order dated December 20, 2004, the Second Circuit denied petitioner's motion for a certificate of appealability and dismissed the appeal, citing 28 U.S.C. § 2253(c) and Miller-El v. Cockrell, 537 U.S. 322 (2003). By motion dated July 13, 2005, petitioner has requested whether she may reopen her motion for a certificate of appealability in light of the Supreme Court's recent decision in Miller-El v. Dretke, 125 S.Ct. 2317 (2005). While the court may not consider a motion for a certificate of appealability for petitioner's original habeas petition, given that the petition has been dismissed on appeal, petitioner may present her claim in a second or successive habeas petition. Under 28 U.S.C. § 2244(b)(2)(A), claims presented in successive petitions shall be dismissed unless "the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously

unavailable.” If petitioner chooses to file a second petition, she should file that petition with the United States Court of Appeals for the Second Circuit, as the district court may only consider such a petition if authorized by the court of appeals. 28 U.S.C. § 2244(b)(3)(A). In advising petitioner that she may file a second petition with the court of appeals, the court expresses no view as to whether her petition should or will be authorized by the court of appeals.

SO ORDERED.


Allyne R. Ross
United States District Judge

Dated: July 22, 2005
Brooklyn, New York

SERVICE LIST:

Petitioner *Pro Se*

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